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CS/HB 7115

2012 Legislature

1
2 An act relating to a review under the Open Government
3 Sunset Review Act; amending s. 288.075, F.S., which
4 provides public record exemptions for information held
5 by economic development agencies; saving from repeal
6 the exemption concerning plans, intentions, or
7 interests of a private corporation, partnership, or
8 person to locate, relocate, or expand any of its
9 business activities in this state; providing that the
10 exemption applies if a request for confidentiality is
11 made before an economic incentive agreement is signed;
12 specifying the time period during which information
13 remains confidential and exempt when a final project
14 order for a signed economic development agreement is
15 issued; saving from repeal the exemption for trade
16 secrets; saving from repeal the exemption for
17 proprietary confidential business information; saving
18 from repeal the exemption for identification, account,
19 and registration numbers and sales, wage, and tax data
20 relating to a recipient of an economic development
21 incentive; saving from repeal the exemption for
22 information held pursuant to the administration of an
23 economic incentive program; clarifying and
24 reorganizing the exemption; providing that the taxes
25 paid by businesses participating in an economic
26 incentive program may be disclosed in the aggregate;
27 specifying duration of the period in which certain
28 information held by an economic development agency

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29 relating to a specific business participating in an
30 economic development program remains confidential and
31 exempt; removing the scheduled repeal of the
32 exemptions; providing an effective date.

33
34 Be It Enacted by the Legislature of the State of Florida:

35
36 Section 1. Section 288.075, Florida Statutes, is amended
37 to read:

38 288.075 Confidentiality of records.—

39 (1) DEFINITIONS.—As used in this section, the term:

40 (a) "Economic development agency" means:

41 1. The Department of Economic Opportunity;

42 2. Any industrial development authority created in
43 accordance with part III of chapter 159 or by special law;

44 3. Space Florida created in part II of chapter 331;

45 4. The public economic development agency of a county or
46 municipality or, if the county or municipality does not have a
47 public economic development agency, the county or municipal
48 officers or employees assigned the duty to promote the general
49 business interests or industrial interests of that county or
50 municipality or the responsibilities related thereto;

51 5. Any research and development authority created in
52 accordance with part V of chapter 159; or

53 6. Any private agency, person, partnership, corporation,
54 or business entity when authorized by the state, a municipality,
55 or a county to promote the general business interests or
56 industrial interests of the state or that municipality or

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57 | county.

58 | (b) "Proprietary confidential business information" means

59 | information that is owned or controlled by the corporation,

60 | partnership, or person requesting confidentiality under this

61 | section; that is intended to be and is treated by the

62 | corporation, partnership, or person as private in that the

63 | disclosure of the information would cause harm to the business

64 | operations of the corporation, partnership, or person; that has

65 | not been disclosed unless disclosed pursuant to a statutory

66 | provision, an order of a court or administrative body, or a

67 | private agreement providing that the information may be released

68 | to the public; and that is information concerning:

69 | 1. Business plans.

70 | 2. Internal auditing controls and reports of internal

71 | auditors.

72 | 3. Reports of external auditors for privately held

73 | companies.

74 | (c) "Trade secret" has the same meaning as in s. 688.002.

75 | (2) PLANS, INTENTIONS, AND INTERESTS.—

76 | (a) 1. ~~If Upon written request from~~ a private corporation,

77 | partnership, or person requests in writing before an economic

78 | incentive agreement is signed that, ~~information held by an~~

79 | economic development agency maintain the confidentiality of

80 | information concerning plans, intentions, or interests of such

81 | private corporation, partnership, or person to locate, relocate,

82 | or expand any of its business activities in this state, the

83 | information is confidential and exempt from s. 119.07(1) and s.

84 | 24(a), Art. I of the State Constitution for 12 months after the

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85 date an economic development agency receives a request for
86 confidentiality or until the information is otherwise disclosed,
87 whichever occurs first.

88 2.~~(b)~~ An economic development agency may extend the period
89 of confidentiality specified in subparagraph 1. ~~paragraph (a)~~
90 for up to an additional 12 months upon written request from the
91 private corporation, partnership, or person who originally
92 requested confidentiality under this section and upon a finding
93 by the economic development agency that such private
94 corporation, partnership, or person is still actively
95 considering locating, relocating, or expanding its business
96 activities in this state. Such a request for an extension in the
97 period of confidentiality must be received prior to the
98 expiration of any confidentiality originally provided under
99 subparagraph 1. ~~this section.~~

100
101 If a final project order for a signed economic development
102 agreement is issued, then the information will remain
103 confidential and exempt for 180 days after the final project
104 order is issued, until a date specified in the final project
105 order, or until the information is otherwise disclosed,
106 whichever occurs first. However, such period of confidentiality
107 may not extend beyond the period of confidentiality established
108 in subparagraph 1. or subparagraph 2.

109 (b)~~(e)~~ A public officer or employee may not enter into a
110 binding agreement with any corporation, partnership, or person
111 who has requested confidentiality of information under this
112 subsection until 90 days after the information is made public

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113 unless:

114 1. The public officer or employee is acting in an official
115 capacity;

116 2. The agreement does not accrue to the personal benefit
117 of such public officer or employee; and

118 3. In the professional judgment of the officer or
119 employee, the agreement is necessary to effectuate an economic
120 development project.

121 (3) TRADE SECRETS.—Trade secrets held by an economic
122 development agency are confidential and exempt from s. 119.07(1)
123 and s. 24(a), Art. I of the State Constitution.

124 (4) PROPRIETARY CONFIDENTIAL BUSINESS INFORMATION.—
125 Proprietary confidential business information held by an
126 economic development agency is confidential and exempt from s.
127 119.07(1) and s. 24(a), Art. I of the State Constitution, until
128 such information is otherwise publicly available or is no longer
129 treated by the proprietor as proprietary confidential business
130 information.

131 (5) IDENTIFICATION, ACCOUNT, AND REGISTRATION NUMBERS.—A
132 federal employer identification number, unemployment
133 compensation account number, or Florida sales tax registration
134 number held by an economic development agency is confidential
135 and exempt from s. 119.07(1) and s. 24(a), Art. I of the State
136 Constitution.

137 (6) ECONOMIC INCENTIVE PROGRAMS.—

138 (a) The following information held by an economic
139 development agency pursuant to the administration of an economic
140 incentive program for qualified businesses is confidential and

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141 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
142 Constitution for a period not to exceed the duration of the
143 incentive agreement, including an agreement authorizing a tax
144 refund or tax credit, or upon termination of the incentive
145 agreement:

146 1. The percentage of the business's sales occurring
147 outside this state and, for businesses applying under s.
148 288.1045, the percentage of the business's gross receipts
149 derived from Department of Defense contracts during the 5 years
150 immediately preceding the date the business's application is
151 submitted.

152 ~~2. The anticipated wages for the project jobs that the~~
153 ~~business plans to create, as reported on the application for~~
154 ~~certification.~~

155 ~~2.3. The average wage actually paid by the business for~~
156 ~~those jobs created by the project or~~ An individual employee's
157 personal identifying information that ~~which~~ is held as evidence
158 of the achievement or nonachievement of the wage requirements of
159 the tax refund, tax credit, or incentive agreement programs or
160 of the job creation requirements of such programs.

161 ~~3.4.~~ The amount of:

- 162 a. Taxes on sales, use, and other transactions paid
- 163 pursuant to chapter 212;
- 164 b. Corporate income taxes paid pursuant to chapter 220;
- 165 c. Intangible personal property taxes paid pursuant to
- 166 chapter 199;
- 167 d. Insurance premium taxes paid pursuant to chapter 624;
- 168 e. Excise taxes paid on documents pursuant to chapter 201;

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169 f. Ad valorem taxes paid, as defined in s. 220.03(1); or
170 g. State communications services taxes paid pursuant to
171 chapter 202.

172
173 However, an economic development agency may disclose in the
174 annual incentives report required under s. 288.907 the aggregate
175 amount of each tax identified in this subparagraph and paid by
176 all businesses participating in each economic incentive program.

177 (b)1. The following information held by an economic
178 development agency relating to a specific business participating
179 in an economic incentive program is no longer confidential or
180 exempt 180 days after a final project order for an economic
181 incentive agreement is issued, until a date specified in the
182 final project order, or if the information is otherwise
183 disclosed, whichever occurs first ~~may release:~~

184 a. The name ~~Names~~ of the qualified business ~~businesses~~.

185 b. The total number of jobs the ~~each~~ business committed
186 ~~expects~~ to create or retain.

187 c. The total number of jobs created or retained by the
188 ~~each~~ business.

189 d. Notwithstanding s. 213.053(2), the amount of tax
190 refunds, tax credits, or incentives awarded to, ~~and~~ claimed by,
191 or, if applicable, refunded to the state by the ~~each~~ business.

192 e. The anticipated total annual wages of employees the
193 business committed to hire or retain.

194 2. For a business applying for certification under s.
195 288.1045 which is based on obtaining a new Department of Defense
196 contract, the total number of jobs expected and the amount of

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197 tax refunds claimed may not be released until the new Department
198 of Defense contract is awarded.

199 ~~(c) An economic development agency may publish statistics~~
200 ~~in the aggregate and classified so as to prevent the~~
201 ~~identification of a single qualified applicant.~~

202 (7) PENALTIES.—Any person who is an employee of an
203 economic development agency who violates the provisions of this
204 section commits a misdemeanor of the second degree, punishable
205 as provided in s. 775.082 or s. 775.083.

206 ~~(8) LEGISLATIVE REVIEW OF EXEMPTIONS. This section is~~
207 ~~subject to the Open Government Sunset Review Act in accordance~~
208 ~~with s. 119.15 and shall stand repealed on October 2, 2012,~~
209 ~~unless reviewed and saved from repeal through reenactment by the~~
210 ~~Legislature.~~

211 Section 2. This act shall take effect upon becoming a law.